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Supreme Court, U.S.
FILED
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No._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

HASSAN ZOK, *Petitioner*,

vs.

HON. ROBERT EASTAUGH, HON. DANIEL A. MOORE, HON. JAY A. RABINOWITZ, HON. WARREN W. MATTHEWS, HON. ALLEN T. COMPTON, HON. JOAN M. WOODWARD, AND VENABLE VERMONT, JR., *Respondents*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI (RULE 14)

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51PP

QUESTIONS PRESENTED FOR REVIEW

1. Does a United States District Court lack subject matter jurisdiction over a suit alleging a 42 U.S.C. § 1985 conspiracy when the conspirators include a state superior court judge who presided at the trial of the state and its officers for depriving a plaintiff of statutory and constitutional rights under color of law, a state assistant attorney general who defended the state and its officers at that trial, and the justices of the state supreme court who affirmed the lower court's complete denial of compensation for actual, compensatory, and punitive damages to the plaintiff, where the record confirms that the conspirators individually and jointly committed numerous illegal and unethical acts and omissions designed to deprive the plaintiff of a just resolution of his damage claims, thereby denying him due process of law and equal protection of the laws in violation of the Fourteenth Amendment?

2. Does a state assistant attorney general enjoy absolute immunity from a federal civil rights lawsuit when he intentionally and repeatedly lies to the court in the course of defending the state and its officers in a civil damage suit, where his lies are directly responsible for preventing any consideration of actual, punitive, and compensatory damages sought by a plaintiff who was illegally beaten, falsely arrested, and unlawfully imprisoned by the state officers?

3. If judges and government attorneys enjoy immunity from suit for their wrongful official acts which, in violation of federal law, deprive a party to a civil proceeding of a just settlement of damage claims, then what is the proper redress for such an injured party?

LIST OF PARTIES

Petitioner, Hassan Zok, at all relevant times mentioned herein, was and still is a naturalized American Citizen of Egyptian birth, and a Imam of the Religion of Islam.

Respondents, Hon. Robert Eastaugh, Hon. Daniel A. Moore, Hon. Jay A. Rabinowitz, Hon. Warren W. Matthews and Hon. Allen T. Compton, at all relevant times mentioned herein, were Justices of the Supreme Court of the State of Alaska who issued rulings, decisions and opinions which deprived Petitioner of rights under color of law in Alaska Supreme Court Case No. S-5728, on appeal from Alaska Superior Court Case No. 3AN-88-9941 Civil. With the exception of Hon. Daniel A. Moore (retired), these respondents are all still Justices of the Supreme Court of the State of Alaska.

Respondent, Hon. Joan M. Woodward, formerly known as Joan M. Katz, at all relevant times mentioned herein, was and still is an Alaska Superior Court Judge who issued rulings, decisions, opinions and judgments which deprived Petitioner of rights under color of law in Alaska Superior Court Case No. 3AN-88-9941 Civil.

Respondent, Venable Vermont, Jr., at all relevant times mentioned herein, was and still is an Assistant Attorney General for the State of Alaska who defended the State of Alaska and three Anchorage International Airport Safety Officers during the litigation in Alaska Superior Court Case No. 3AN-88-9941 Civil.

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OPINIONS BELOW

The Ninth Circuit's Memorandum decision and Order denying petition for rehearing have not been reported. They are reprinted in the appendix hereto, beginning at p. 1a, *infra*.

The Order and Judgment of the United States District Court for the District of Alaska have not been reported. They are reprinted in the appendix hereto, beginning at p. 4a, *infra*.

STATEMENT OF JURISDICTION

Invoking federal jurisdiction under 28 U.S.C. §§ 1331, 1343 and 42 U.S.C. §§ 1981, 1983, 1985, 1986, Petitioner brought suit in the United States District Court for the District of Alaska. On August 26, 1996, the District Court entered an Order From Chambers dismissing Petitioner's complaint. On August 28, 1996, the District Court entered its final Judgment In A Civil Case. Petitioner's motion for reconsideration of dismissal was denied by the District Court on September 10, 1996.

Petitioner appealed to the Ninth Circuit under 28 U.S.C. § 1291. In its Memorandum decision entered on July 14, 1997, the appeals court affirmed the lower court's dismissal of Petitioner's complaint. On November 20, 1997, the Ninth Circuit denied Zok's petition for rehearing.

The jurisdiction of this Court to review the Ninth Circuit's judgment is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

U.S. Constitution, Amendment XIV, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1985(2)&(3). Conspiracy to interfere with civil rights.

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or

Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT OF THE CASE

The Petitioner, Hassan Zok, filed suit against three Anchorage International Airport Safety Officers, Russell Slaten, Robert Billiet, and Mark Reese, and against their employer, the State of Alaska, claiming that the officers assaulted and illegally arrested him. Trial was held in the Superior Court for the State of Alaska at Anchorage. Petitioner was represented by his attorney, Richard Collins. In the liability phase of Zok's bifurcated trial, the jury found the officers guilty of illegally arresting Zok. At trial, Zok presented evidence of the injuries he sustained as a direct result of the merciless beating he endured at the hands of the Anchorage Airport Police. The jury was specifically disallowed from considering any of the evidence Zok presented to substantiate the degree of injury he sustained. As a result, even though the jury found that Zok had been illegally arrested and beaten, during the damages phase of the trial they awarded him zero dollars in actual damages, since they had been instructed by Judge Woodward (Katz) to ignore all evidence regarding the nature and extent of Zok's injuries. In other words, the jury was denied the use of any evidence upon which to base a legitimate damage award. Three days after the verdict, Zok moved for a new trial on the issue of damages. His motion for new trial was denied.

Zok appealed to the Supreme Court of the State of Alaska. Their appellate decision, cited as Zok v. State of Alaska, Mark Reese, Russel Slaten, 903 P.2d 574 (Alaska, 1995), is reprinted in the appendix hereto, beginning at p. 23a, *infra*. In his Appellant's Brief, Zok asked that court to review the lower court proceedings and order a new trial on the issue of damages. In his argument, Zok alleged that he was entitled both to nominal damages and to actual and punitive damages for his pain, suffering, and loss of enjoyment of life. Alaska's high court remanded the case to the Superior Court with instructions to award $1.00 in nominal damages, but failed or refused to address any of Petitioner's arguments regarding his injuries, his entitlement to actual and punitive damages, and the clear errors committed throughout the proceeding in the trial court.

After conclusion of his appeal in the Supreme Court of the State of Alaska, Zok filed a complaint in the United States District Court for the District of Alaska against the five Justices of the Alaska Supreme Court, Superior Court Judge Joan Woodward, and Venable Vermont, Jr., Assistant Attorney General for the State of Alaska. Zok's federal complaint, assigned Case No. A96 173 CIV (JWS), sought relief under various federal statutes for violation of his rights by the Defendants. The case was assigned to U.S. District Court Judge John W. Sedwick, and forthwith transmitted to U.S. Magistrate Judge Roberts for report and recommendation on Defendant's motion to dismiss. On August 26, 1996, Judge John Sedwick issued an Order From Chambers which dismissed the case, citing agreement with the Report And Recommendation and the Final Recommendation of Magistrate Judge Roberts, which urged dismissal of the case on grounds of lack of jurisdiction and sovereign immunity.

On appeal, the Ninth Circuit entered a Memorandum decision on July 14, 1997 which affirmed the District Court's dismissal of Petitioner's complaint. In that decision, the Court of Appeals misconstrued Petitioner's federal suit as a "42 U.S.C. § 1983 complaint", failing to acknowledge that Zok's complaint alleged violations of various other federal statutes and both federal and state constitutional provisions. One such statute of particular relevance to the questions presented for review by this Court is 42 U.S.C. § 1985, under which Zok alleged a conspiracy among the several defendants

to deprive him of civil rights. Without discussion of the issues raised on appeal, the appellate decision stated only that "[w]e affirm the district court's judgment for the reasons set forth in the magistrate judge's Report And Recommendation filed July 23, 1996, which was adopted by the district court in an order filed August 26, 1996."

Since both the District Court and the Ninth Circuit adopted the U.S. Magistrate Judge's Report and Recommendation as the basis for their final decisions, it is reprinted in the appendix hereto, beginning at p. 6a, *infra*. The magistrate judge urged dismissal of Petitioner's complaint on three grounds pertinent to the questions presented for review by this Court: 1) lack of subject matter jurisdiction; 2) absolute immunity enjoyed by the defendants who are Alaska Supreme Court justices; and 3) absolute immunity enjoyed by defendant Venable Vermont, Jr., as the assistant attorney general who defended the state and its officers in the state court trial. The latter two issues are discussed below under Reasons for Granting the Writ.

With respect to the jurisdictional issue, the magistrate judge viewed Zok's complaint as an attempt to relitigate issues decided in the state trial, citing appropriate case law showing that in such cases, a district court lacks subject matter jurisdiction. He then stated, "Zok's claims against all defendants, except the defendants who were the Alaska Supreme Court Justices that reviewed his case, were decided in state court proceedings." Upon this reasoning, he concluded, "Thus, all defendants (except Eastaugh, Rabinowitz, Matthews, and Compton) are entitled to dismissal on the ground that this court lacks jurisdiction over Zok's claims."

In so concluding, the magistrate judge failed to consider Zok's 42 U.S.C. § 1985 claim of conspiracy to deprive an individual of his civil rights. Since this conspiracy involved all defendants, it was not, nor could it have been, decided in the state court proceedings.

In deciding Zok v. State of Alaska, et. al., *supra*, the justices of the Alaska Supreme Court unanimously refused to consider Zok's well founded claims that numerous errors by the court in the proceeding below had worked to deprive him of the right to have a jury consider an appropriate damage award for injuries caused by the defendants. In so doing, they acted in concert to cover up evidence of official wrongdoing which was shown to have caused a

denial to Petitioner of his civil rights and constitutional due process guarantees. The unanimous refusal of the Alaska Supreme Court justices to rectify the evident wrongs Zok suffered in the court below, is not an act performed in the exercise of judicial discretion; rather, it is an act performed in excess of legitimate judicial authority and in violation of the oath each justice takes to uphold the State and federal constitutions, and it is an act in the nature of a conspiracy to deprive a person of his civil rights.

The extent of this conspiracy becomes evident upon a close examination of the court's decision in Zok v. State, et. al., *supra*. Here, the court focused upon Zok's use of the term "nominal damages", the discussion of which constitutes the bulk of the opinion. Alaska's high court also specifically refused to consider Zok's claim that he is entitled to actual and punitive damages for pain, suffering, and loss of enjoyment of life. However, as used throughout his Appellant's Brief to that court, Zok never intentionally used "nominal damages" as the Alaska Supreme Court construes that term. Instead, he used the term within the context of his entitlement to actual damages, and sometimes may even have used "nominal" to mean "actual". Zok is not an attorney and appeared pro se in his appeal to the Alaska Supreme Court.

In Haines v. Kerner, 404 U.S. 519, this Court held that legal documents submitted by pro se litigants are held "to less stringent standards than formal pleadings drafted by lawyers." Numerous cases decided by the Alaska Supreme Court uphold this principle in State litigation. In deciding Zok's appeal, the court should rightfully have construed Zok's use of "nominal damages" to include "actual damages", since the context absolutely requires such a construction and since Zok appeared pro se. The Court's adherence to a strict technical meaning of "nominal damages" and its failure to require consideration of actual damages is certainly unreasonable in this case, but does it indicate poor judgment, or something more insidious?

The Alaska Supreme Court considered only the issues of an inconsistent verdict and nominal damages. In conclusion, the court said, "We reject all other claims of error Zok has raised or attempted to raise in this appeal." In the preceding paragraph, the court said, "A new trial is unnecessary because the error [regarding nominal damages] can be corrected by the court as a matter of law, and thus

there is no harm in correcting the verdict after the jury has been discharged." However, if the court had not refused to consider Zok's claim that he is entitled to actual and punitive damages, which would have required a thorough review of the lower court's record and evidence, it would have been forced to conclude that a new trial on the issue of damages is necessary.

It may first appear that the failure of the Alaska Supreme Court to allow and require the jury to consider Zok's actual damages was merely an oversight, but their own decision on appeal tells another story. As described above, Justice Eastaugh focused entirely upon Zok's use of the term "nominal damages" in his Appellant's Brief to that court, completely disregarding the fact that in his Reply Brief, Zok adequately clarified that by his use of the term "nominal damages", he meant to include actual damages.

In his delivery of the court's decision, Justice Eastaugh defined two kinds of nominal damages: (1) a "trifling or token allowance" for a technical invasion of rights or breach of duty when no actual injury is shown, and (2) "the very different allowance" made upon a showing of actual loss or injury, where the extent and amount of damages has not been proven. Referring to the first type of nominal damages, Justice Eastaugh cited a case indicating that such damages are appropriate only when there is/are "no substantial injury nor general nor consequential damages". Incredibly, Justice Eastaugh concluded that "it is this [first] type of claim for nominal damages which Zok presents." To round out the charade, he later remarked that "Zok argues that the jury could or should have awarded him ten million dollars in nominal damages. A nominal damages award greater than some trivial figure would have been legally excessive."

Never mind that Zok's Appellant's Brief contained several clear references to pain, suffering, and loss of enjoyment of life as part of Zok's argument for "nominal damages". Never mind that Zok's Reply Brief cleared up any confusion concerning Zok's use of "nominal damages", making it clear that Zok used the term in the second sense given above, not the first. Never mind that Zok had requested ten million dollars, which is not exactly a "trifling or token allowance". Never mind that injury photographs and medical records substantiating Zok's injuries were part of the record on appeal, to which Zok had specifically directed the Alaska Supreme Court's attention. Never mind the truth, in light of which it becomes

abundantly clear that Justice Eastaugh arbitrarily, intentionally, and maliciously refused to properly construe Zok's request for nominal damages to include a substantial allowance for actual injuries sustained. By their concurrence in the opinion, the other justices of the Alaska Supreme Court are equally guilty of the same arbitrary, intentional, and malicious behavior designed to prevent Zok from receiving adequate compensation for his damages.

The requisite conduct comprising a "conspiracy to interfere with civil rights" is defined by 42 U.S.C. § 1985, which also provides that "the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators." The conduct of the Alaska Supreme Court justices in this instance falls squarely within the scope of this statute.

The conspiracy to deprive Zok of his right to full adjudication of his damage claims is not confined to the Alaska Supreme Court justices. They simply confirmed the clearly erroneous decisions and jury instructions made at trial, which effectively barred the jury from consideration of actual damages incurred by Zok. Respondents Joan Woodward (Katz) and Venable Vermont, Jr., as Superior Court Judge and Assistant Attorney General, respectively, complete the illegal conspiracy to deprive Zok of his civil rights. Their various lies and misdeeds are described in detail in Zok's federal complaint, reprinted in the appendix hereto, beginning at p. 12a, *infra*. Therein, Zok specifically requested the U.S. District Court to declare that all of the defendants "acted individually or in concert to deprive Plaintiff, Hassan Zok, of redress for deprivations of rights under color of law..." (Complaint, ¶ 35.)

Thus, the U.S. Magistrate Judge clearly erred by concluding that the District Court lacked subject matter jurisdiction with respect to the defendants other than the Alaska Supreme Court justices.

REASONS FOR GRANTING THE WRIT

I.

The Ninth Circuit's holding that a state assistant attorney general enjoys absolute immunity when defending the state and its officers in a civil suit, is in conflict with decisions of this Court which afford only qualified immunity to state executive officers.

In his Report and Recommendation, the U.S. Magistrate Judge discussed the amenability of Respondent Venable Vermont, Jr. to suit under 42 U.S.C. § 1983, from the perspective of both his official and personal capacity. Petitioner agrees that Vermont cannot be sued in his official capacity, as such a suit is essentially a suit against the State, which is not a "person" under the statute. But the conclusion that Assistant Attorney General Vermont, in his personal capacity, enjoys absolute immunity for illegal acts he committed as defense counsel for the state and its officers, is in conflict with the decisions of this Court.

To justify absolute immunity for Vermont, the magistrate judge cited two decisions of this Court and one from the Ninth Circuit. Imbler v. Pachtman, 424 U.S. 409, 426 n.24 (1976); Butz v. Economou, 438 U.S. 478, 516-517 (1978); and Fry v. Melaragno, 939 F.2d 832, 837 (9th Cir. 1991). With respect to Vermont, these cases are simply off point, as they all concern government attorneys engaged in criminal, civil, or administrative prosecution.

In Zok's case, Vermont served as defense counsel for the state and its officers, a role vastly different from that of prosecutor. State executive officials, such as Vermont, perform any number of distinct functions, often interfacing with the legislative and judicial branches of government. This Court has long recognized that just because an executive officer performs official duties, he is not automatically clothed with absolute immunity. Rather, the norm for such officials is qualified immunity. As stated in Hafer v. Melo, 502 U.S. 21 (1991):

> Yet our cases do not extend absolute immunity to all officers who engage in necessary official acts. Rather,

immunity from suit under 1983 is "predicated upon a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it," Imbler v. Pachtman, 424 U.S. 409, 421 (1976), and officials seeking absolute immunity must show that such immunity is justified for the governmental function at issue, Burns v. Reed, 500 U.S. 478, 486-487 (1991).

This Court has refused to extend absolute immunity beyond a very limited class of officials, including the President of the United States, legislators carrying out their legislative functions, and judges carrying out their judicial functions, "whose special functions or constitutional status requires complete protection from suit." Harlow v. Fitzgerald, 457 U.S. 800, 807 (1982). State executive officials are not entitled to absolute immunity for their official actions.

Government defense attorneys enjoy no constitutional status granting absolute immunity, nor do they perform "special functions" which require "complete protection from suit." Every attorney employed by a private individual to defend a civil action is amenable to suit, both for legal malpractice and for deprivation of civil rights. There is nothing in the record below to show why government defense attorneys should be treated differently. On the other hand, there are specific, identifiable reasons which are cited to justify absolute immunity for prosecutors, which simply have no application to attorneys defending the state in a civil suit. This Court summarized these in Imbler v. Pachtman, *supra.*

If a prosecutor had only a qualified immunity, the threat of 1983 suits would undermine performance of his duties no less than would the threat of common-law suits for malicious prosecution. A prosecutor is duty bound to exercise his best judgment both in deciding which suits to bring and in conducting them in court. The public trust of the prosecutor's office would suffer if he were constrained in making every decision by the consequences in terms of his own potential liability in a suit for damages. Such suits could be expected with some frequency, for a defendant often will transform his resentment at being prosecuted into the ascription of improper and malicious actions to

> the State's advocate. Cf. Bradley v. Fisher, 13 Wall., at 348; Pierson v. Ray, 386 U.S., at 554. Further, if the prosecutor could be made to answer in court each time such a person charged him with wrongdoing, his energy and attention would be diverted from the pressing duty of enforcing the criminal law.

The Ninth Circuit has set a dangerous and disturbing precedent in recognizing absolute immunity for government defense attorneys such as Vermont. Surely one of the most effective checks upon abuse of government power available to the average citizen is his right to sue government officials for damages when they overstep the bounds of their legitimate authority. Such suits can and often do result in sizable awards for actual and punitive damages to the victims of malevolent public officials, and rightly so. But, even without absolute immunity for government defense attorneys, the government still enjoys a tremendous advantage over most who would bring suit, in terms of a virtually unlimited legal defense fund. To give government defense attorneys carte blanche to lie and cheat with immunity would drastically alter whatever semblance of fairness may currently exist in such legal proceedings.

II.

The decision below, that absolute immunity enjoyed by state prosecutors extends to government attorneys who defend the state in civil suits, raises an important matter of first impression to this Court.

As Petitioner has shown, there is no precedent in the decisions of this Court recognizing absolute immunity for government attorneys engaged to defend the state in civil actions. To the best of Petitioner's knowledge, this issue has never been specifically addressed by this Court. Considering the dangers just outlined, and to lay to rest any possibility that the Ninth Circuit's flawed doctrine will spread to other circuits, Petitioner urges this Court to take advantage of the opportunity this case presents to decisively settle this issue.

III.

The decision of the Ninth Circuit brings into focus the important and unresolved problem of lack of a proper remedy for individuals wrongly injured by acts of judges who enjoy absolute immunity.

The judicial history of this Court's recognition of absolute immunity for judges performing judicial functions is rather extensive, but one inevitable consequence of such immunity has received but scant attention. What is the proper redress for the victim of unlawful discrimination perpetrated by a corrupt public official who is considered to enjoy absolute immunity from suit? In Imbler v. Pachtman, *supra*, this Court recognized the problem, but fell far short of any adequate resolution. Commenting on the situation of an individual who suffers at the hands of a dishonest prosecutor, the Court said:

> We conclude that the considerations outlined above dictate the same absolute immunity under 1983 that the prosecutor enjoys at common law. To be sure, this immunity does leave the genuinely wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty.

Incredibly, in a decision that explores in great detail the necessity for insulating a prosecutor from personal attack by those he wrongly harms, this is all the Court has to say to the victim. Later in the decision, the Court makes a feeble attempt to insure the citizenry that "the public" is not without recourse against a malicious prosecutor who abuses the public trust.

> We emphasize that the immunity of prosecutors from liability in suits under 1983 does not leave the public powerless to deter misconduct or to punish that which occurs. This Court has never suggested that the policy considerations which compel civil immunity for certain governmental officials also place them beyond the reach of the criminal law. Even judges, cloaked with absolute civil immunity for centuries, could be punished criminally for willful deprivations of constitutional rights on the strength of 18 U.S.C. 242, the criminal analog of 1983.

> O'Shea v. Littleton, 414 U.S. 488, 503 (1974); cf. Gravel v. United States, 408 U.S. 606, 627 (1972). The prosecutor would fare no better for his willful acts. Moreover, a prosecutor stands perhaps unique, among officials whose acts could deprive persons of constitutional rights, in his amenability to professional discipline by an association of his peers. These checks undermine the argument that the imposition of civil liability is the only way to insure that prosecutors are mindful of the constitutional rights of persons accused of crime.

Not only does such reasoning reek of aristocratic elitism, it exposes a fundamental flaw in the doctrine of absolute immunity for judges and prosecutors, as taught by this Court. What justice is there in a doctrine that deprives one citizen, who is directly harmed by the malicious actions of another, of any hope of redress, yet allows the collective mass of citizens ("the public") who are only indirectly harmed, to achieve what the victim may not? There is none. Further, such rationale flies in the face of this Court's long recognized respect for the rights of the individual in American society.

In Eisentrager v. Forrestal, 174 F.2d 961 (1949), the United States Court of Appeals, District of Columbia Circuit, expounded this principle:

> Action of Government officials in violation of the Constitution is void. ... A basic and inherent function of the judicial branch of a government built upon a constitution is to set aside void action by government officials, and so to restrict executive action to the confines of the constitution. In our jurisprudence, no Government action which is void under the Constitution is exempt from the judicial power ...

Quoting from Johnson v. Zerbst, 304 U.S. 458, 467 (1938), the court in Eisentrager further declared:

> Of the contention that the law provides no effective remedy for such a deprivation of rights affecting life and liberty it may well be said -- as in Mooney v. Holohan, 294 U.S. 103, 113, 79 L.Ed. 791, 98 A.L.R. 406 -- that it 'falls with the premise.' To deprive a citizen of his only effective remedy would not only be contrary to the 'rudimentary

demands of justice' but destructive of a constitutional guaranty specifically designed to prevent injustice.

In the landmark case of Kendall v. The United States, 12 Pet. 524 (1838), which involved whether or not the circuit court had the power to issue a mandamus to the Postmaster of the United States, the Supreme Court admitted:

> It cannot be denied but that Congress had the power to command that act to be done; and the power to enforce the performance of the act must rest somewhere, or it will present a case which has often been said to involve a monstrous absurdity in a well organized government, that there should be no remedy, although a clear and undeniable right should be shown to exist. And if the remedy cannot be applied by the Circuit Court of this district, it exists nowhere.

If the Ninth Circuit's application of the doctrine of absolute immunity of judges is correct, as also recognized and practiced by this Court, then in this Court's own words, a "monstrous absurdity" exists with respect to Zok. Here is a man whose rights guaranteed by the Constitution have been violated by government officials, but for which the courts maintain there is no remedy. Such a position is repugnant to the Constitution of the United States of America and the high principles of justice upon which the entire system of American jurisprudence is based. In Bell v. Hood, 327 U.S., at 684, this Court said:

> [I]t is ... well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done.

While Rome burned, Nero is said to have fiddled. At a time in the history of this country when respect for law, the legal profession, and government institutions is declining at an alarming rate, this Court can no longer sit idly by, clinging to the erroneous assumptions which may have guided your long dead colleagues. Now is the time to decisively resolve the issue before this Court. If adequate redress for individuals wronged by government officials is not guaranteed by this Court, then the day will surely come when Americans will have no more respect for those who don black robes

and flash official badges, than for the common thugs who steal our substance, rape our daughters, and murder our sons. Public policy is up for review.

This Petitioner stands before you this day, with God as his witness, and prays that this Court will rise above the petty political concerns and prejudices which often cloud the minds of good men, to render a just opinion in this matter.

CONCLUSION

The Petitioner, Hassan Zok, hereby calls upon this Court to carefully review the issues argued herein, to reverse the Ninth Circuit's decision affirming dismissal of Zok's complaint, and to remand to the United States District Court for the District of Alaska with directions to move this case to trial on the merits.

Dated this 10th day of February, 1998.

Hassan Zok

HASSAN ZOK, in Propria Persona

APPENDIX

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HASSAN ZOK,	)	No. 96-36071
	)	
Plaintiff-Appellant,	)	D.C. No.
	)	CV-96-00173-JWS
v.	)	
	)	
ROBERT EASTAUGH; DANIEL A. MOORE; JAY A RABINOWITZ; WARREN W. MATTHEWS; ALLEN T. COMPTON; JOAN WOODWARD; VENABLE VERMONT, JR.; MARK REESE; RUSSEL SLATEN; ROBERT BILLIET; STATE OF ALASKA,	)	MEMORANDUM*
	)	
Defendants-Appellees.	)	

Appeal from the United States District Court
for the District of Alaska
John W. Sedwick, District Judge, Presiding

Submitted July 14, 1997**

Before: HUG, Chief Judge; KOZINSKI and LEAVY, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

Hassan Zok appeals pro se the district court's dismissal of his 42 U.S.C. § 1983 complaint against Alaska Assistant Attorney General Venable Vermont, Jr., Superior Court Judge Joan Woodward, and five justices of the Alaska Supreme Court. Vermont represented three police officers in Zok's state court civil rights lawsuit against the officers. Woodward presided over the trial of that action. The Alaska Supreme Court held that the trial court erred in failing to instruct the jury on nominal damages. Rather than remand for a new trial, the Supreme Court awarded Zok one dollar.

We affirm the district court's judgment for the reasons set forth in the magistrate judge's Report and Recommendation filed July 23, 1996, which was adopted by the district court in an order filed August 26, 1996.

AFFIRMED.

Note: The following Date stamp appears on the first page of the original document:

FILED

JUL 21 1997

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HASSAN ZOK,	)	No. 96-36071
	)	
Plaintiff-Appellant,	)	D.C. No.
	)	CV-96-00173-JWS
v.	)	Alaska (Anchorage)
	)	
ROBERT EASTAUGH; DANIEL A. MOORE; JAY A RABINOWITZ; WARREN W. MATTHEWS; ALLEN T. COMPTON; JOAN WOODWARD; VENABLE VERMONT, JR.; MARK REESE; RUSSEL SLATEN; ROBERT BILLIET; STATE OF ALASKA,	)	ORDER
	)	
Defendants-Appellees.	)	

Before: HUG, Chief Judge; KOZINSKI and LEAVY, Circuit Judges.

The petition for rehearing is denied.

Note: The following Date stamp appears on original document:

FILED

NOV 20 1997

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

MINUTES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

HASSAN ZOK v. HONORABLE ROBERT EASTAUGH, et. al.

THE HONORABLE JOHN W. SEDWICK
CASE NO. A96-0173 CV (JWS)

Deputy Clerk	Official Recorder
Pam Richter	

APPEARANCES: for PLAINTIFF: ----
for DEFENDANT: ----

PROCEEDINGS: **ORDER FROM CHAMBERS**

The magistrate judge has recommended that the defendants' motion to dismiss at docket 12 be granted. This court reviews that recommendation de novo.

Having conducted a de novo review, this court concludes that the magistrate judge is correct in all respects and adopts his findings and conclusions. The motion at docket 12 is GRANTED. This action is DISMISSED.

Date: August 26, 1996 ENTERED AT JUDGE'S DIRECTION
INITIALS: prr
Deputy Clerk

Note: The following Date stamp appears on original document:

FILED
AUG 26 1996
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

HASSAN ZOK

Plaintiff,

vs. *Case Number A96-0173 Cv (JWS)*

HONORABLE ROBERT EASTAUGH, ET. AL.

Defendant. **JUDGMENT IN A CIVIL CASE**

___ ***JURY VERDICT.*** *This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.*

_x_ ***DECISION BY COURT.*** *This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.*

IT IS ORDERED AND ADJUDGED
THAT this action is DISMISSED.

APPROVED:

J.W. Sedwick (*signature*)
U.S. District Judge

28 August '96 (*written*)
Date

MICHAEL D. HALL
Clerk

(*signature illegible*)
(By) Deputy Clerk

Note: The following Date stamp appears on original document:

FILED
AUG 29 1996
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

HASSAN ZOK,	)	
	)	No. A96-0173 CV (JWS)
Plaintiff,	)	
vs.	)	REPORT AND
	)	RECOMMENDATION
Hon. ROBERT ESTAUGH, et al.	)	
	)	(DEFENDANTS'
Defendant.	)	MOTION TO
	)	DISMISS)

The court has now before it a motion to dismiss made by the defendants in the above entitled action. (Docket No. 12). The motion is made pursuant to Fed. R. Civ. P. 12(b)(1) and (6). Said motion is opposed by the plaintiff, Hassan Zok. (Docket No. 15; reply at 17). For the reasons stated below the defendants' motion to dismiss should be granted.

BACKGROUND

Zok brings this action alleging deprivation of his constitutional rights and alleges jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, 43 U.S.C. § 1983, 42 U.S.C. § 1981, 42 U.S.C. § 1985 and/or 42 U.S.C. § 1986, and similar and related provisions under Alaska law, all operating to redress deprivations of rights guaranteed under the Constitution of the United States of America Article IV § 2 and Amendments I, IV, IX, and XIV; and the Constitution of the State of Alaska, Article I, §§ 1, 7, 14, 15 and 21. His case finds its genesis in state court civil proceedings which began in 1988 in Superior Court and was ultimately decided by the Alaska Supreme Court in case number S-5728. In that case Zok alleged that three Anchorage International Airport Safety Officers assaulted and illegally arrested him. At trial a jury found that the officers illegally arrested Zok, but awarded him zero dollars in damages.

Zok's appeal to the Alaska Supreme Court resulted in a Pyrrhic victory. That court found error in the trial court's failure to give jury instructions on nominal damages, and entered judgment in the amount of one dollar.

DISCUSSION

Zok maintains that the three Safety Officers "unprofessionally and illegally arrested, assaulted, and battered and mercilessly and without justification, beat Plaintiff, Hassan Zok, subjecting Mr. Zok to obloquy, disgrace and humiliation, continuing pain and suffering (even to this date), in excess of $50,000.00 in medical and counselling expenses, and other damages, losses and injuries." Zok's theory in the present case is that he was not properly compensated for these injuries because his attorney in the state litigation (Richard B. Collins), the defendants' attorney (Assistant Attorney General Venable Vermont Jr.) and the judge (The Honorable Joan Woodward) conducted themselves in a manner constituting various acts of malfeasance and misfeasance. Attorney Collins is not a defendant in this suit.

Zok ties the allegations against Vermont and Woodward to defendants Eastaugh, Moore, Rabinowitz, Matthews and Compton (Justices of the Alaska Supreme Court which heard Zok's case) by virtue of their opinion issued in response to Zok's appeal. Zok claims that the actions of the defendants were illegally discriminatory because they were taken on the basis of religion, national origin, ethnicity, color, and race. Zok claims that these actions violated his First Amendment rights and his right to a jury of his peers. Zok argues that is was done because of his "status as an Imam of the religion of Islam, and [because] of his status as an Islamic-Egyptian-Arab-American citizen.

It is not necessary to dwell on the specifics of wrongs that Zok argues were thrust upon him by the defendants. They range from allegations of improper jury instructions regarding damages, to his disagreement with the evidentiary rulings regarding the beatings he allegedly suffered at the hands of the Safety Officers, and the trial court's having "allowed challenges to all persons of color" on the jury. This case can be analyzed and disposed of on the grounds stated in the arguments presented by the defendants in their motion to dismiss.

I

JURISDICTION

Defendants argue that Zok cannot obtain federal review here because his case, although broadly styled as a civil rights action, is actually an attempt to obtain federal review of his state court litigation. A United States District Court does not have authority (subject matter jurisdiction) to review final judgments of a state court in judicial proceedings. D.C. Court Of Appeals v. Feldman, 460 U.S. 462, 482 (1983). Actions attacking such judgments, even if they allege constitutional claims, are properly brought before the Supreme Court Of The United States. Id. at 486. This is accomplished after first appealing to the highest state court and then certiorari to the Supreme Court Of The United States. Sitton v. United States, 413 F.2d 1386, 1389 (5th Cir. 1969). "The United States District Court, as a court of original jurisdiction, has no authority to review the final determinations of a state court in judicial proceedings." Worldwide Church Of God v. McNair, 805 F.2d 888, 890 (9th Cir. 1986).

Ergo, to the extent that Zok's complaint seeks judicial review of his state court proceedings this court is without subject matter jurisdiction. Under Feldman the Supreme Court held that if the constitutional claims presented to a United States district court are "inextricably intertwined" with the state court's ruling in a judicial proceeding then the district court is essence being called upon to review the state court decision. 460 U.S. 483-484 n.16. The test set forth by Ninth Circuit for determining whether the a district court is being asked to exceed its jurisdiction by reviewing state court proceedings is as follows:

> Faced with the task of deciding our power to review constitutional issues which arise from a state court proceeding, we view the res judicata requirement of full and fair opportunity to litigate, and the Feldman "inextricably intertwined" barrier as two sides of the same coin. Under the rubric, of either "jurisdiction" or "res judicata", the crux of the question is whether there has already been actual consideration of and a decision on the issue presented. If consideration and decision have been accomplished, action in federal court is an impermissible

> appeal from the state court decision. If no consideration has been given, or any decision on the matter is ambiguous, it is unlikely that the issues presented to the state high court and to the federal court are so "inextricably intertwined" that the federal court cannot take jurisdiction. (citations omitted).

Worldwide Church Of God, 805 F.2d at 892.

In the case presently before the court it is clear that much of Zok's complaint seeks review of issues presented to the Alaska Supreme Court. Zok's claims against all defendants, except the defendants who were the Alaska Supreme Court Justices that reviewed his case, were decided in state court proceedings. As the Ninth Circuit teaches:

> "The district court could not evaluate the plaintiffs' constitutional claims without conducting a review of the state court's legal determination and the jury's verdict. The district court would be required to review the state court's decision regarding application of the plaintiffs' federal constitutional theories to the particular factual circumstances of this case. The district court may not do so. See Feldman, 460 U.S. at 486, 103 S.Ct. at 1316; Razatos, 746 F.2d at 1433.

Worldwide Church Of God, 805 F.2d 892-893.

Here, all of Zok's allegations against the non-Supreme Court defendants were "inextricably intertwined" with the state court proceedings since they attack the rulings and conduct of the state trial court judge, and the conduct of the lawyers in the case. Furthermore, as for any claims Zok should have been raised before the Alaska Supreme Court, and to the extent they were not, they have been forfeited, because the Supreme Court Of The United States will not decide federal constitutional issues raised for the first time upon review of state court decisions. Feldman, 460 U.S. at 482 n.16. Thus, all defendants (except Eastaugh, Rabinowitz, Matthews, and Compton) are entitled to dismissal on the ground that this court lacks jurisdiction over Zok's claims.

II

DEFENDANTS EASTAUGH, RABINOWITZ, MATTHEWS, AND COMPTON ENJOY ABSOLUTE IMMUNITY.

Obviously, the Alaska Supreme Court did not consider Zok's claims against the justices of that court which Zok now sues as an outgrowth of the decision they rendered in his case. However, even assuming that these defendants committed the acts Zok alleges, they enjoy absolute immunity from suit. Judges and those performing judge-like functions are absolutely immune from damage liability for acts performed in their official capacity. Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986). This applies even where a judge acts maliciously, and requires the clear absence of jurisdiction to be overcome. Crooks v. Maynard, 820 F.2d 329, 332-333 (9th Cir. 1987). In the case at bar, defendants Eastaugh, Rabinowitz, Matthews, and Compton acted within their official capacities. Therefore, Zok's claims against them must be dismissed on the ground that these defendants enjoy absolutely immunity.

III

THE CLAIMS AGAINST DEFENDANT VERMONT IN HIS OFFICIAL CAPACITY ARE BARRED.

It is not clear whether Zok is suing defendant Vermont in his official or personal capacity. Either way, Zok's claims against Vermont must be dismissed. Federal Constitutional tort actions may be brought against persons acting under color of state law. However, the state of Alaska is not a "person" for purposes of suits for damages under § 1983. Will v. Michigan Dept. Of State Police, 491 U.S. 58, 65 (1989). Consequently, actions against state officials in their official capacities are subject to dismissal, since such actions are in essence against the state itself. Kentucky v. Graham, 473 U.S. 159, 165-166 (1985); Vest v. Schafer, 757 P.2d 588, 594 (Alaska 1988). Zok's arguments regarding qualified immunity under Harlow v. Fitzgerald, 457 U.S. 800 (1982) are simply off point. Harlow was concerned with discretionary authority of state officials, not absolute immunity afforded judqes. Hence, Zok's claims against Vermont should be dismissed because it is actually a claim against the state and is therefore barred.

IV

DEFENDANT VERMONT IS ENTITLED TO ABSOLUTE IMMUNITY IN HIS PERSONAL CAPACITY.

Even if Zok's complaint were construed as a suit against Vermont in his individual capacity, these claims should be dismissed because Vermont is entitled to absolute immunity. It is well established that government prosecutor's have absolute immunity from prosecution because the discretion which executive officials exercise with respect to the initiation of administrative proceedings might be distorted if their immunity from damages arising from that decision was less than complete. Imbler v. Pachtman, 424 U.S. 409, 426 n.24 (1976). The Supreme Court has extended absolute immunity to agency attorneys conducting a trial or presenting evidence, seeing "no substantial difference between the function of the agency attorney in an agency hearing and the function of the prosecutor. Butz v. Economou, 438 U.S. 478, 516-517 (1978). Finally, the Ninth Circuit instructs that "the principles outlined in Butz apply to the government attorney's initiation and handling of civil litigation in a state or federal court. Fry v. Melaragno, 939 F.2d 832, 837 (9th Cir. 1991). Zok's arguments regarding qualified immunity under Harlow v. Fitzgerald, 457 U.S. 800 (1982) are simply off point. Harlow was concerned with discretionary authority of state officials, not absolute immunity afforded government attorneys. Thus, Zok's claims against Vermont should be dismissed if they are made against him in his personal capacity on the ground that he enjoys absolute immunity.

CONCLUSION

For the foregoing reasons it is hereby recommended that the defendants' motion to dismiss at docket No. 12 be **GRANTED**.

Dated at Anchorage, Alaska this 23rd day of July, 1996.

John D. Roberts (signature)
United States Magistrate Judge

Hassan Zok, Plaintiff pro se
P.O. Box 110915
Anchorage, Alaska 99511-00915

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

HASSAN ZOK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	A96-0173 CV (JWS)
Hon. ROBERT EASTAUGH,	)	
Hon. DANIEL A. MOORE,	)	
Hon. JAY A. RABINOWITZ,	)	**COMPLAINT SEEKING**
Hon. WARREN W. MATTHEWS,	)	**REDRESS FOR**
Hon. ALLEN T. COMPTON,	)	**VIOLATIONS OF**
Hon. JOAN M. WOODWARD,	)	**RIGHTS UNDER**
and VENABLE VERMONT, Jr.,	)	**COLOR OF LAW**
	)	
Defendants.	)	
	)	
----------	)	
	)	
MARK REESE, RUSSEL	)	
SLATEN, ROBERT BILLIET,	)	
and STATE OF ALASKA,	)	
	)	
Real Parties	)	
In Interest.	)	
	)	

Comes now Hassan Zok, pro se, and complains of Defendants, Hon. Robert Eastaugh, Hon. Daniel A. Moore, Hon. Jay A. Rabinowitz, Hon. Warren W. Matthews, Hon. Allen T. Compton,

Hon. Joan M. Woodward, and Venable Vermont, Jr., alleging as follows:

PARTIES

1. Presently and at all relevant times Hassan Zok is and was a naturalized American Citizen of Egyptian birth, and a Imam of the Religion of Islam.

2. Defendants, Hon. Robert Eastaugh, Hon. Daniel A. Moore, Hon. Jay A. Rabinowitz, Hon. Warren W. Matthews and Hon. Allen T. Compton, are Justices of the Supreme Court of the State of Alaska who issued rulings, decisions and opinions which deprived Plaintiff, Hassan Zok, of rights under color of law in Supreme Court File No. S-5728.

3. Defendant, Hon. Joan M. Woodward, formerly known as Joan M. Katz, is an Alaska Superior Court Judge who issued rulings, decisions, opinions and judgments which deprived Plaintiff, Hassan Zok, of rights under color of law in Alaska Superior Court (at Anchorage), Case No. 3AN-88-9941 Civil.

4. Defendant, Venable Vermont, Jr., is an Assistant Attorney General for the State of Alaska, who overstepped the bounds of immunity, and acted in such a manner as to violate federal law and to deprive Plaintiff, Hassan Zok, of rights under color of law during the litigation in Alaska Superior Court (at Anchorage), Case No. 3AN-88-9941 Civil.

REAL PARTIES IN INTEREST

5. Real Parties In Interest, Mark Reese, Russel Slaten, and Robert Billiet, were at relevant times State of Alaska Airport Security Officers, who illegally arrested and unlawfully assaulted and battered Plaintiff, Hassan Zok, while in the course of their official duties, thereby depriving Plaintiff of rights under color of law. Moreover, Real Parties In Interest, Mark Reese, Russel Slaten, and Robert Billiet, were at relevant times defendants and appellees in the related Alaska Superior Court and Alaska Supreme Court cases (see ¶¶ 9 et seq. below) and any decision in this case may affect their interests associated with the related Alaska Superior Court and Alaska Supreme Court cases.

6. Real Party In Interest State of Alaska also has interests which may be affected by any decision in this case.

JURISDICTION

7. The United States District Court, District of Alaska has jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343 42 U.S.C. 1983, 42 U.S.C. 1981, 42 U.S.C. 1985 and/or 42 U.S.C. 1986, and similar and related provisions under Alaska law, all operating to redress deprivations of rights guaranteed under the Constitution of the United States of America, Art. IV, § 2, and Amendments I, IV, V, IX and XIV; and the Constitution of the State of Alaska, Article I, §§ 1, 7, 14, 15 and 21. Jurisdiction also applies under the "common nucleus of operative fact" rule of the case **Hurn v. Oursler** 289 U.S. 238 (1933) and other statutes and decisions governing jurisdiction for pendant and ancillary claims.

VENUE

8. The United States District Court, District of Alaska is the proper venue as it is the District in which the Defendants reside; and the District in which the Defendants do business.

STATEMENT OF RELATED CASES AND EXHAUSTION OF STATE REMEDIES

9. Prior to the present action, an appellate case was litigated before the Alaska Supreme Court, entitled **Zok v. State of Alaska, Mark Reese, Russel Slaten and Robert Billiet**, Alaska Supreme Court Case No. S-5728. An Alaska Supreme Court Opinion (Opinion No. 4262) was issued on September 29, 1995, and Petition For Rehearing was denied on November 17, 1995. **NO FURTHER STATE REMEDIES ARE AVAILABLE TO PLAINTIFF, HASSAN ZOK, REGARDING THE SUBJECT MATTER OF THIS ACTION.**

10. Prior to (and on remand following) the proceedings referenced in ¶ 9 before the Alaska Supreme Court, there were proceedings before the Alaska Superior Court at Anchorage, Alaska which were entitled **Zok v. State of Alaska, Mark Reese, Russel Slaten and Robert Billiet**, Case No. 3AN-88-9941 Civil. Judgments were entered by Defendant, Hon. Joan Woodward in Case No. 3AN-88-9941 Civil before the appeal, and after the appeal on December 12, 1995.

11. Contemporaneously with, or shortly after, the filing of this complaint, an action will be filed against Plaintiff's attorney,

Richard B. Collins, who represented Plaintiff, Hassan Zok, in the Alaska Superior Court case **Zok v. State of Alaska, Mark Reese, Russel Slaten and Robert Billiet**, Case No. 3AN-88-9941 Civil.

FIRST AND OTHER CLAIMS FOR RELIEF

DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES

12. This lawsuit arises from a February 13, 1988 incident whereby the State of Alaska Airport Security Officers' had illegally arrested and assaulted and battered Plaintiff, Hassan Zok; the Airport Security Officers' had used unnecessary and excessive force upon Plaintiff; and the Airport Security Officers' had mercilessly beat Plaintiff; and the Airport Security Officers' had abused their power so as to have deprived Plaintiff, Hassan Zok, of constitutional, statutory and/or other rights under color of law.

13. The illegal arrest and use of unnecessary force occurred when Plaintiff, Hassan Zok, an Imam of the Moslem religion, was in the presence of members of the congregation whom Plaintiff led as their Imam. Moreover also present were several taxicab drivers, fellow associates of the same profession as Plaintiff. These facts had served to exacerbate the obloquy, disgrace and humiliation experienced by Plaintiff during the unlawful arrest and use of excessive force.

14. Notwithstanding the legal malpractice of his attorney, Richard B. Collins, Defendant, Hon. Joan M. Woodward, made judgments, rulings and decisions in the Alaska Superior Court case entitled **Zok v. State of Alaska, Mark Reese, Russel Slaten and Robert Billiet**, Case No. 3AN-88-9941 Civil, which deprived Plaintiff, Hassan Zok, of rights under color of law. These judgments, rulings and decisions included, without limitation, the following (see ¶¶ 15-20). Defendants, Hon. Robert Eastaugh, Hon. Daniel A. Moore, Hon. Jay A. Rabinowitz, Hon. Warren W. Matthews, Hon. Allen T. Compton, violated those same rights of Plaintiff, Hassan Zok, by their acts and omissions in the appeal entitled **Zok v. State of Alaska, Mark Reese, Russel Slaten and Robert Billiet**, Alaska Supreme Court Case No. S-5728. An Alaska Supreme Court Opinion (Opinion No. 4262) was issued on September 29, 1995, and Petition For Rehearing was denied on November 17, 1995.

15. Defendant, Hon. Joan M. Woodward, issued orders in the Alaska Superior Court litigation against Plaintiff preventing Plaintiff from presenting medical evidence of the injuries Plaintiff, Hassan Zok, had received from the beating and illegal arrest by the three (3) Airport Security Officers. This occurred after Defendant Assistant Attorney General, Venable Vermont, lied and claimed in the Alaska Superior Court litigation that Plaintiff had not produced requested medical records and releases, when in fact Plaintiff had produced such records in 1988, and had signed releases in 1988 authorizing the release of past, current and future medical information and records. These violations by Defendants, Hon. Joan M. Woodward and Venable Vermont, Jr.,. granted special privileges and immunities to the Alaska Superior Court Defendants in violation of state and federal constitutional proscriptions; and further deprived Plaintiff, Hassan Zok, of state and federal due process of law, and deprived Plaintiff of state and federal provisions providing for the equal protection of law. [See applicable provisions of Constitution of the United States of America, Art. IV, § 2, and Amendments I, IV, V, IX and XIV; and the Constitution of the State of Alaska, Article I, §§ 1, 7, 14, 15 and 21.]

16. Defendant, Hon. Joan M. Woodward, issued orders in the Alaska Superior Court litigation against Plaintiff preventing Plaintiff from presenting evidence of lost income incurred by Plaintiff, Hassan Zok. This occurred after Defendant, Assistant Attorney General, Venable Vermont, lied and claimed that Plaintiff had failed to produce financial records or releases in the Alaska Superior Court litigation. In fact Plaintiff had produced releases concerning financial records, documents and evidence in 1988. These violations by Defendants, Hon. Joan M. Woodward and Venable Vermont, Jr., granted special privileges and immunities to the Alaska Superior Court Defendants in violation of state and federal constitutional proscriptions; and further deprived Plaintiff, Hassan Zok, of state and federal due process of law, and deprived Plaintiff of state and federal provisions providing for the equal protection of law. [See applicable provisions of Constitution of the United States of America, Art. IV, § 2, and Amendments I, IV, V, IX and XIV; and the Constitution of the State of Alaska, Article I, §§ 1, 7, 14, 15 and 21.]

17. Defendant, Hon. Joan M. Woodward, issued orders in the Alaska Superior Court litigation against Plaintiff preventing Plaintiff from referring in any manner to his injuries sustained in the beating and unlawful arrest during the trial in the Alaska Superior Court litigation. These violations by Defendants, Hon. Joan M. Woodward and Venable Vermont, Jr., granted special privileges and immunities to the Alaska Superior Court Defendants in violation of state and federal constitutional proscriptions; and further deprived Plaintiff, Hassan Zok, of state and federal due process of law, and deprived Plaintiff of state and federal provisions providing for the equal protection of law. [See applicable provisions of Constitution of the United States of America, Art. IV, § 2, and Amendments I, IV, V, IX and XIV; and the Constitution of the State of Alaska, Article I, §§ 1, 7, 14, 15 and 21.]

18. Defendant, Hon. Joan M. Woodward, issued orders in the Alaska Superior Court litigation against Plaintiff preventing Plaintiff from referring in any manner to the dismissal of charges in the precedent illegal arrest. These violations by Defendant, Hon. Joan M. Woodward, granted special privileges and immunities to the Alaska Superior Court Defendants in violation of state and federal constitutional proscriptions; and further deprived Plaintiff, Hassan Zok, of state and federal due process of law, and deprived Plaintiff of state and federal provisions providing for the equal protection of law. [See applicable provisions of Constitution of the United States of America, Art. IV, § 2, and Amendments I, IV, V, IX and XIV; and the Constitution of the State of Alaska, Article I, §§ 1, 7, 14, 15 and 21.]

19. Defendant, Hon. Joan M. Woodward, issued orders in the Alaska Superior Court litigation against Plaintiff preventing Plaintiff from referring in any manner to his status as an Imam of the religion of Islam, and of his status as an Islamic-Egyptian-Arab-American citizen.

20. The jury in the Alaska Superior Court jury determined that the arrest was illegal, but due to the here complained actions of Defendants, Hon. Joan M. Woodward and Venable Vermont, Jr., the state court jury awarded zero damages.

21. On appeal (reh. denied), Defendants, Hon. Robert Eastaugh, Hon. Daniel A. Moore, Hon. Jay A. Rabinowitz, Hon. Warren W. Matthews and Hon. Allen T. Compton, reversed the Alaska Superior

Court judgment for zero damages and awarded nominal damages of $1.00. In so acting said Defendants violated Plaintiff, Hassan Zok's, rights as had Defendant, Hon. Joan M. Woodward as aforesaid.

22. Defendant, Joan M. Woodward, violated duties owed by the court and the judicial system to Plaintiff, Hassan Zok, by failing to protect Plaintiff from the misfeasance and non-feasance of Plaintiff's Alaska Superior Court attorney, e.g. without limitation: (a) failing to enter default and default judgment of Superior Court defendant, Real Party In Interest, Robert Billiet; (b) allowing Plaintiff's Alaska attorney, Richard B. Collins, without informed consent from Plaintiff, Hassan Zok, to waive the attorney-client privilege concerning a communication from Plaintiff to Collins, and allowing Defendant, Venable Vermont, Jr., to present the letter as evidence against Plaintiff during the damage portion of the Alaska Superior Court proceedings; (c) permitting Defendant, Venable Vermont, Jr., to pre-empt all persons of color from the jury.

23. On appeal (reh. denied), Defendants, Hon. Robert Eastaugh, Hon. Daniel A. Moore, Hon. Jay A. Rabinowitz, Hon. Warren W. Matthews and Hon. Allen T. Compton, violated Plaintiff, Hassan Zok's, rights as had Defendant, Hon. Joan M. Woodward as aforesaid. Plaintiff, Hassan Zok, has suffered and will continue to suffer immediate and irreparable harm unless the federal Court intervenes and provides injunctive and declaratory relief.

24. These violations by Hon. Robert Eastaugh, Hon. Daniel A. Moore, Hon. Jay A. Rabinowitz, Hon. Warren W. Matthews, Hon. Allen T. Compton, Hon. Joan M. Woodward, and Venable Vermont, Jr., also constituted the following (see ¶¶ 25-32):

25. Unfair and unlawful discrimination on the basis of Religion and a denial of equal protection violating the cited provisions of the federal and state constitutions.

26. Unfair and unlawful discrimination on the basis of national origin and a denial of equal protection violating the cited provisions of the federal and state constitutions.

27. Unfair and unlawful discrimination on the basis of ethnicity and a denial of equal protection violating the cited provisions of the federal and state constitutions.

28. Unfair and unlawful discrimination on the basis of color and a denial of equal protection violating the cited provisions of the federal and state constitutions.

29. Unfair and unlawful discrimination on the basis of race and a denial of equal protection violating the cited provisions of the federal and state constitutions.

30. A prior restraint on freedom of speech, expression and association violating the federal First Amendment, and equivalent or broader provisions in Article I of the Alaska Constitution..

31. By allowing the challenges to all persons of color on the Alaska Superior Court jury, there was a denial of Plaintiff, Hassan Zok's, right to a civil jury of one's peers in violation of federal and state due process, and other constitutional provisions as aforesaid.

32. See also applicable provisions of Constitution of the United States of America, Art. IV, § 2, and Amendments I, IV, V, IX and XIV; and the Constitution of the State of Alaska, Article I, §§ 1, 7, 14, 15 and 21 for which redress is provided under 28 U.S.C. § 1331, 28 U.S.C. § 1343 42 U.S.C. 1983, 42 U.S.C. 1981, 42 U.S.C. 1985 and/or 42 U.S.C. 1986, and similar and related provisions under Alaska law.

32. Plaintiff, Hassan Zok's, damages, losses and injuries, all proximately caused by Defendants, Hon. Robert Eastaugh, Hon. Daniel A. Moore, Hon. Jay A. Rabinowitz, Hon. Warren W. Matthews, Hon. Allen T. Compton, Hon. Joan M. Woodward, and Venable Vermont, Jr., include without limitation: medical and counselling expenses; lost income; lost income opportunities; anguish, pain, suffering and emotional upset; humiliation; obloquy; legal fees, costs and expenses including without limitation legal fees, costs and expenses on appeal; and such other damages, losses and injuries as shall be demonstrated at or before trial in an amount in excess of TEN MILLION DOLLARS & 00/100 CENTS ($10,000,000.00) the exact amount to be determined at or before trial.

33. That the injuries, losses and damages incurred by Plaintiff go beyond a single litigant and are indicative of inconsistent, arbitrary and capricious policies against the public good

34. That the actions of Defendant, Venable Vermont, Jr., was both within and outside the scope of his duties as Assistant Attorney General, and had been willful, reckless, outrageous, fraudulent and oppressive, so that punitive and exemplary damages should be awarded to Plaintiff, Hassan Zok, against Defendant, Venable Vermont, Jr., in an amount to be determined at or before trial.

RELIEF REQUESTED

WHEREFORE Plaintiff, Hassan Zok, prays for judgment against Defendants, Hon. Robert Eastaugh, Hon. Daniel A. Moore, Hon. Jay A. Rabinowitz, Hon. Warren W. Matthews, Hon. Allen T. Compton, Hon. Joan M. Woodward, and Venable Vermont, Jr., and for relief as follows:

35. DECLARATORY RELIEF: For the Court to declare that Defendants, Hon. Robert Eastaugh, Hon. Daniel A. Moore, Hon. Jay A. Rabinowitz, Hon. Warren W. Matthews, Hon. Allen T. Compton, Hon. Joan M. Woodward, and Venable Vermont, Jr., acted individually or in concert to deprive Plaintiff, Hassan Zok, of redress for deprivations of rights under color of law, and in so acted further deprived Plaintiff of rights under color of law, causing Plaintiff damage; and that Plaintiff was entitled to a substantial award of money damages from the Alaska courts; and that the Alaska courts acted improperly in not permitting entry of a default judgment against Real Party In Interest, Robert Billiet, who defaulted in the Alaska Superior Court action.

36. INJUNCTIVE RELIEF: For the Court to restrain and enjoin enforcement of the Alaska Supreme Court decision No. 4262, rendered by Defendants, Robert Eastaugh, Daniel A. Moore, Jay A. Rabinowitz, Warren W. Matthews and Allen T. Compton, entered on September 29, 1995; and to restrain and enjoin enforcement of the denial of the Petition For Rehearing entered on November 17, 1995; all in Alaska Supreme Court Case No. S-5728.

37. INJUNCTIVE RELIEF: For the Court to restrain and enjoin enforcement of the Alaska Superior Court decision rendered by Defendant, Joan Woodward in Alaska Superior Court Case No. 3AN-88-9941 Civil before the appeal, and after the appeal on December 12, 1995.

38. For compensatory, consequential, special, punitive and other money damages to be awarded to Plaintiff, against Defendants, Defendants, Hon. Robert Eastaugh, Hon. Daniel A. Moore, Hon. Jay A. Rabinowitz, Hon. Warren W. Matthews, Hon. Allen T. Compton, Hon. Joan M. Woodward, and Venable Vermont, Jr., in an amount to be determined at or before trial.

39. For the Court to exercise its discretion and to take account of the special circumstances and excuse non-prejudicial errors of

Plaintiff, that may arise in pro se lawsuits. [See **Haines v. Kerner** 404 U.S. 519 (1972).]

40. For costs, interest (before and after judgment), and attorneys' fees under 42 U.S.C. §1988, Alaska Civil Rule 82 and otherwise as appropriate.

41. And for such further and other relief as the Court deems just and proper under the circumstances.

Respectfully submitted this May 13, 1996 from Anchorage, Alaska.

(original signed)
Hassan Zok, pro se

VERIFICATION

State of Alaska)
) ss.
Third Judicial District)

Plaintiff, Hassan Zok, deposes upon his oath and affirms as follows:

42. I have personal knowledge of the facts declared herein. Moreover I am a competent adult, and if called to testify, I could and would testify to the truth of the matters stated herein.

43. That I have read the above complaint and the facts set forth in the complaint are true and correct.

Further Affiant Sayeth Naught.

Dated this May 13, 1996

(original signed)
Hassan Zok

ACKNOWLEDGMENT AND JURAT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this May 13, 1996 personally appeared before me Hassan Zok, to me known or proven to be the individual described in and who before me subscribed to and affirmed the truth of the above verification, and said person acknowledged that the verification was signed as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal this May 13, 1996

(original signed)
NOTARY PUBLIC in and for the State of Alaska
(SEAL) My Commission Expires: (original dated)

PUBLISHED OPINION

HASSAN ZOK,
Appellant,

vs.

STATE OF ALASKA, MARK REESE, RUSSEL SLATEN,
Appellees.

No. 4262, Supreme Court No. S-5728
SUPREME COURT OF ALASKA
903 P.2d 574
September 29, 1995, Decided

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Joan M. Woodward, Judge. Superior Court No. 3AN-88-9941 Civil.

Petition for Rehearing Denied November 18, 1995.

COUNSEL

Hassan Zok, pro se, Anchorage, for Appellant.

Venable Vermont, Jr., Assistant Attorney General, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellees.

JUDGES

Before: Moore, Chief Justice, Rabinowitz, Matthews, Compton and Eastaugh, Justices.

AUTHOR: EASTAUGH

OPINION

EASTAUGH, Justice.

I. FACTS AND PROCEEDINGS

Hassan Zok filed suit against three Anchorage International Airport Safety Officers and their employer, the State of Alaska,

claiming the officers had assaulted and illegally arrested him.[1] In the liability phase of Zok's bifurcated trial, the jury found the officers guilty of illegally arresting Zok. The same jury awarded Zok zero dollars at the completion of the damages phase of the trial. Zok moved for a new trial three days later. The motion was denied and this appeal followed.

II. DISCUSSION

Zok alleges that the court erred in failing to instruct the jury regarding nominal damages and that the jury's verdict of zero damages was inconsistent with its prior finding that the officers were guilty of illegally arresting Zok.[2] Zok argues that these errors entitle him to a new trial.[3]

A. Inconsistent Verdict

Zok claims that the jury's verdict was inconsistent with the evidence presented. We have held that challenges to the consistency of a verdict must be made prior to the discharge of the jury. Blumenshine v. Baptiste, 869 P.2d 470, 473 (Alaska 1994); Grow v. Ruggles, 860 P.2d 1225, 1226 (Alaska 1993). Zok did not challenge the jury's verdict before the jury was discharged; he consequently waived his right to challenge the verdict's consistency.

B. Failure to Instruct Jury Regarding Nominal Damages

Zok argues that a victim of false arrest is entitled to nominal damages as a matter of law. He argues that the court's failure to instruct the jury regarding nominal damages entitles him to a new trial. The officers respond that even assuming that Zok was entitled to nominal damages, he waived this argument and the court's failure to give a nominal damages instruction is harmless error.

Alaska Civil Rule 51(a) provides in part:

> No party may assign as error the giving or the failure to give an instruction unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection.

In this case, Zok's attorney did not object to the court's failure to provide an instruction regarding nominal damages before the jury retired to consider its verdict. Thus, this court will only review the lack of jury instruction if plain error has occurred. Conam Alaska v. Bell Lavalin, Inc., 842 P.2d 148, 153 (Alaska 1992). Plain error occurs if a jury instruction creates "a high likelihood that the jury will follow an erroneous theory resulting in a miscarriage of justice." Id. (citing Ollice v. Alyeska Pipeline Serv. Co., 659 P.2d 1182, 1185 (Alaska 1983)). When analyzing plain error in jury instructions we must ultimately determine whether a correct instruction would have likely altered the result of the jury's verdict. Id. (citing Hout v. NANA Commercial Catering, 638 P.2d 186, 189 (Alaska 1981); Miller v. Sears, 636 P.2d 1183, 1190 (Alaska 1981); City of Nome v. Ailak, 570 P.2d 162, 171 (Alaska 1977)). Thus, we must determine whether the court's failure to instruct the jury that nominal damages are available as a matter of law to a victim of false arrest likely altered the jury's verdict in a way which resulted in a miscarriage of justice.

False arrest is one way of committing the tort of false imprisonment. Ailak, 570 P.2d at 168; W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 11, at 50 (5th ed. 1984); Barry A. Lindahl et al., Modern Tort Law § 41.02, at 503 (rev. ed. 1993). Although this court has never addressed the issue, Zok is correct when he argues that a victim of false arrest is entitled to nominal damages as a matter of law, regardless of whether actual damages have been proven. Raysor v. Port Auth., 768 F.2d 34, 39 (2d Cir. 1985), cert. denied, 475 U.S. 1027, 89 L. Ed. 2d 337, 106 S. Ct. 1227 (1986); Wilson v. Eberle, 15 Alaska 651, 18 F.R.D. 7, 9 (D. Alaska 1955); Shelton v. Barry, 328 Ill. App. 497, 66 N.E.2d 697, 702 (Ill. 1946); Ivy v. Wal-Mart Stores, Inc., 777 S.W.2d 682, 684 (Mo. Ct. App. 1989); Tessier v. LaNois, 98 R.I. 333, 201 A.2d 927 (R.I. 1964); City of McMechen v. Fidelity and Casualty Co., 145 W. Va. 660, 116 S.E.2d 388, 392 (W. Va. 1960); Keeton § 11, at 48. The reasoning behind this rule is that, as a matter of law, a plaintiff in a false arrest case need offer no proof of actual damages because injury in the sense of monetary loss is not an element of the tort. Ivy, 777 S.W.2d at 684.[4]

Thus, once the jury found the officers guilty of unlawful arrest, Zok was entitled at least to nominal damages. Had the jury been instructed that, having found an unlawful arrest, it was required to award Zok nominal damages, the jury would have been legally bound to do so.

Zok's right to an award of nominal damages is not insignificant, even though the amount of such an award would have been insignificant. It is recognized that "an award of nominal damages is a significant legal right . . . ." 1 Marilyn Minzer et al., Damages in Tort Actions § 2.02, at 2-10 (1993). Courts use the term "nominal damages" to describe two types of awards: (1) a "trifling or token allowance" for a technical invasion of a plaintiff's rights or a breach of a legal duty when no actual injury is shown, or (2) "the very different allowance" made when actual loss or injury is shown, but plaintiff has failed to prove the extent and amount of damages. Id., § 2.10, at 2-18.

One court has described the first type of nominal damages as follows:

> Whenever any cognizable right of a person is violated, though there be no substantial injury nor general nor consequential damages, the law requires that the right be declared and affirmed and disapproval of its violation significantly voiced through the form of an award of nominal damages.

Cottone v. Cristiano, 1 Misc. 2d 1036, 156 N.Y.S.2d 115, 117-18 (City Ct. of City of N.Y. 1956). It is this type of claim for nominal damages which Zok presents.

In Farrar v. Cain, 756 F.2d 1148 (5th Cir. 1985), appeal following remand, Estate of Farrar v. Cain, 941 F.2d 1311 (5th Cir. 1991), aff'd in part and rev'd in part, sub nom, Farrar v. Hobby, 506 U.S. 103, 121 L. Ed. 2d 494, 113 S. Ct. 566 (1992) (holding nominal damages sufficient to establish prevailing party status but affirming denial of attorney's fees on ground that award of nominal damages does not usually entitle a prevailing party to fees under 28 U.S.C. § 1988), the jury found that Hobby had violated the plaintiffs' civil rights, but awarded no damages against Hobby or other defendants. 756 F.2d at 1149-50. The plaintiffs argued on appeal that the trial court erred in failing to instruct the

jury on nominal damages and in failing to award nominal damages as a matter of law because, in civil rights cases, nominal damages are routinely presumed or inferred. 756 F.2d at 1150. Plaintiffs had not objected at trial to the proposed instructions and special jury interrogatories. Id. On appeal, the Fifth Circuit held that the failure to object precluded review of the damages instructions concerning defendants other than Hobby because as to those defendants -- who did not violate plaintiffs' civil rights -- there was no fundamental error or miscarriage of justice. 756 F.2d at 1151. With regard to Hobby, however, the Fifth Circuit observed:

> Even when a violation of a civil right causes no actual injury to the plaintiff, the plaintiff is entitled to recover nominal damages. We have awarded nominal damages, not to exceed one dollar, when an infringement of a fundamental right was shown and we have also held that, once a jury has found a violation of a plaintiff's civil rights, it "could not ignore that finding in calculating damages. Violation of [the plaintiff's] constitutional rights was, at a minimum, worth nominal damages." Because the jury explicitly found that defendant Hobby had violated Farrar's civil rights, the jury should have awarded Farrar nominal damages, not to exceed one dollar, and it was error for the trial court not to do so when the Farrars so moved in their motion for a new trial.

756 F.2d at 1152 (footnotes omitted). The court remanded for entry of an award of nominal damages against Hobby. Id. at 1152-53.

The failure to instruct regarding nominal damages altered the jury's special damages verdict and deprived Zok of the valuable right of full vindication for his unlawful arrest. Recovery of nominal damages is important not for the amount of the award but for the fact of the award. In this situation, the finding of liability, without an award of the nominal damages to which Zok was entitled as a matter of law was a fundamentally incomplete remedy for the particular tort Zok suffered. Thus, the failure to give a nominal damages instruction constitutes plain error. We must therefore review the failure to instruct to determine whether a new trial is necessary.

Nominal damages are by definition minimal monetary damages. Magnett v. Pelletier, 488 F.2d 33, 35 (1st Cir. 1973); Minzer § 2.01, at 2-2. Consequently, the jury could not properly have returned a large nominal damages award for Zok.[5] Rather, nominal damages are usually one cent or one dollar. Scavenius v. City of Anchorage, 539 P.2d 1161, 1165 (Alaska 1975) (stating that the difference between an award of zero dollars and a nominal award is de minimis); Minzer § 2.01, at 2-2. Thus, had the jury been instructed that Zok was entitled to nominal damages, it could have awarded him only a nominal amount, e.g., one dollar.

It is generally recognized that because of the inconsequential monetary value of nominal damages, an appellate court will not reverse a judgment merely for the purpose of permitting the recovery of nominal damages. Kalilikane v. McCravey, 69 Haw. 145, 737 P.2d 862, 866 (Hawaii 1987); Kraisinger v. Liggett, 3 Kan. App. 2d 235, 592 P.2d 477, 480 (Kan. 1979); Gebhardt v. Public Serv. Coordinated Transp., 48 N.J. Super. 173, 137 A.2d 48, 54 (N.J. Sup. 1957); Minzer § 2.40, at 2-49. Some courts, however, have held that a lower court's decision not to award nominal damages will be reversed where nominal damages are necessary to recover punitive damages or determine who is the prevailing party for purposes of an attorney's fees allocation.[6] Schulte v. Florian, 370 S.W.2d 623, 626 (Mo. 1963) (failure to award nominal damages requires reversal only when costs predicated on award of nominal damages); Minzer § 2.02, at 2-10, 2-16, 2-17 & § 2.40, at 2-49 (citing cases).

In this case, the trial court granted summary judgment to the officers on the issue of punitive damages and attorney's fees are not at issue. Thus, the failure to instruct regarding nominal damages did not cause Zok to suffer a substantive monetary loss.

Nevertheless, the jury found that the officers illegally arrested Zok. Zok's right to be free from unlawful confinement is sufficiently important and fundamental in our society that a violation of that right requires an award of nominal damages. Full vindication of that right cannot be achieved simply by finding wrongdoing unless the judgment reflects an award of at least nominal damages.[7] Consequently, judgment must be entered awarding Zok nominal damages of one dollar. A new trial is unnecessary because the error can be corrected by the court as a

matter of law, and thus there is no harm in correcting the verdict after the jury has been discharged. O'Brien v. Mobil Oil Corp., 749 S.W.2d 457, 460-61 (Mo. App. 1988) (Satz, C.J., concurring).

III. CONCLUSION

We REMAND for entry of an award of nominal damages of one dollar in favor of Zok. We reject all other claims of error Zok has raised or attempted to raise in this appeal.

OPINION FOOTNOTES

[1] Zok, who is pro se on appeal, was represented by an attorney in the trial court.

[2] Zok also asserted in his statement of points on appeal that the trial court erred in failing to admit evidence at trial. Zok provided no substantive argument on this point in his opening brief, and only mentioned the court's alleged failure to admit evidence in his reply brief. We have held that where an issue is only mentioned in the opening brief it will not be considered on appeal, even if the issue is more fully argued in the reply brief. Adamson v. University of Alaska, 819 P.2d 886, 889 n.3 (Alaska 1991). Consequently, even applying a more lenient standard for Zok as a pro se litigant, see Breck v. Ulmer, 745 P.2d 66, 75 (Alaska 1987), cert. denied, 485 U.S. 1023, 99 L. Ed. 2d 894, 108 S. Ct. 1579 (1988) (stating that pleadings of pro se litigants should be held to less stringent standards than those of lawyers), Zok waived this issue. Petersen v. Mutual Life Ins. Co., 803 P.2d 406, 411 (Alaska 1990).

Similarly, Zok's claim of ineffective assistance of counsel is also waived because he failed to argue this point on appeal in more than a cursory fashion. Moreover, we have never recognized a right to effective assistance of retained counsel in civil proceedings. Zok's remedy for any perceived deficiency in his attorney's services is a legal malpractice action.

[3] Under Alaska Civil Rule 59(a), a court may grant a new trial if required in the interest of justice. The decision to grant or deny a new trial is within the trial court's discretion. The trial court's decision to deny a new trial will only be overturned in "the most exceptional circumstances and to prevent a miscarriage of

justice." Buoy v. ERA Helicopters, Inc., 771 P.2d 439, 445 n.6 (Alaska 1989). In reviewing such denials, this court will view the evidence in the light most favorable to the non-moving party. Hayes v. Xerox Corp., 718 P.2d 929, 933 (Alaska 1986).

[4] A person is subject to liability to another for false imprisonment if (1) he or she acts intending to confine the other or a third person within boundaries fixed by the actor; (2) his or her act directly or indirectly results in such a confinement of the other; and (3) the other is conscious of the confinement or is harmed by it. Restatement (Second) of Torts § 35, at 52 (1965).

[5] In his brief, Zok argues that the jury could or should have awarded him ten million dollars in nominal damages. A nominal damages award greater than some trivial figure would have been legally excessive.

[6] We held in Oaksmith v. Brusich, 774 P.2d 191, 201 (Alaska 1989), that nominal damages are a sufficient basis for an award of punitive damages. We have never determined whether nominal damages are required for a punitive damages award. We have indicated that in cases where actual damages are not an essential element of the cause of action, once culpability of the defendant is established, a verdict for exemplary damages is permitted even if there is no award of nominal damages. Haskins v. Shelden, 558 P.2d 487, 493 (Alaska 1976).

[7] We have previously reversed and remanded a case involving inverse condemnation even though the amount in controversy came "perilously close" to being de minimus and a new trial was required. Wickwire v. City and Borough of Juneau, 557 P.2d 783, 786 n.11 (Alaska 1976).

In this case, remand is even more clearly appropriate than in Wickwire due to the importance of Zok's right to be free from unlawful confinement and because a new trial is not necessary to correct the error below.